IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 66 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

CADILA CHEMICALS PVT. LTD.

Appearance:

MR MIHIR J. THAKORE, SR. ADVOCATE
for MR MANISH R BHATT for Petitioner
MR MUKESH M PATEL for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 13/01/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Revenue has prayed for calling for statement of case in connection with the following question suggested by it in paragraph 4 of the application.

"Whether, the Appellate Tribunal is right in law and on facts, in deleting the addition of Rs. 3,93,955/- for custom duty from closing stock under Section 43B?"

Earlier, the applicant had applied under Section 256(1) of the I.T Act before the Income Tax Appellate Tribunal for referring the aforesaid question for the opinion of this Court. The Tribunal by its order dated 24.2.1997 held that since the matter was squarely covered by decision of this Court in Lakhanpal National Ltd. Vs. ITO, reported in 162 ITR 240, no question of law arose from its order for seeking opinion of the High Court, which had already decided the question.

The learned Counsel appearing for the applicant Revenue contended that when there existed a question of law in the matter, the High Court, on the authority of the Supreme Court in D.B. Madan Vs. Commissioner of Income Tax, reported in (1992) 102 CTR 169, should call for the statement of case on such question of law for its consideration notwithstanding that it had already decided by the same question in some previous matter. The further contention raised by the learned Counsel for the Revenue is that Lakhanpal's case (supra) on which reliance was placed by the Appellate Tribunal, requires to be reconsidered by a larger Bench.

In D.B. Madan's case (supra), the High Court of Madras had declined to call upon the Appellate Tribunal to state a case and refer a question of law, which was said to arise out of the order of the Tribunal for it's opinion, holding that in view of it's earlier decision (CIT Vs. T.S. Hajee Moosa & Co., reported in 153 ITR 422 [Madras]) no referable question arose from the decision of the Tribunal. In that earlier case the Madras High Court had held, in context of the claim of the assessee firm for deduction of expenditure incurred by it on the wife of the senior partner accompanying him on a foreign tour for the purpose of attending on him as he was a diabetic, that the expenditure in question was in the nature of personal expenses and that even assuming that the expenses related to business purposes, the expenses had a dual or twin purpose and served not only purposes of business but also a personal or private purpose and as the expenditure did not exclusively serve the business, it did not qualify for deduction under Section 37(1) of the Income Tax Act, 1961. The High Court held that the Section also did not permit any allowance from the point of view of any indirect advantage that may be secured as a result of the expenditure. It was therefore held that the Tribunal was

in error in holding that the expenditure was laid out wholly and exclusively for business purposes. Following that earlier decision the High Court in D.B.Madan's case, refused to consider the question to the effect as to whether the Tribunal was justified in holding that the expenditure on the air travel of the assessee's wife was not incurred wholly and exclusively for the purpose of the business of the assessee and that the benefit derived by the wife would detract from the exclusiveness of the outlay, so as to render it ineligible as a deductible expenditure. In this background, the Supreme Court held that it was always open to the High Court to follow it's earlier decision and answer the question of law one way or the other according as whether the view taken in the earlier case commends itself to it or whether, in its opinion, that earlier view needs reconsideration. The Supreme Court then made the following observations, which are sought to be relied upon on behalf of the Revenue in support of its contention that whenever a question of law arises it must necessarily be considered notwithstanding the fact that the High Court had already decided it.

"But it cannot always be said that in all cases where a similar question of law had been answered in an earlier case in a particular way an identical question of law arising in a later case would cease to be referable one and, therefore, the course to be adopted is to reject a reference under Section 256(2)".

We are of the view that these observations can never be construed so as to mean that the High Court should mechanically call for the statement of case on a question of law, which has already been decided by the High Court. These observations only enable the High Court to call for the statement of case on a question of law even if a similar question has already been decided by it. There may be several reasons for which the High Court may consider it necessary to call for statement of case on a question of law, which it may have earlier decided. The context in which the earlier question of law was decided would also be material. The question already decided on a reference may have depended upon considerations which may vary from year to year, or a case may have been decided mainly with reference to the question of onus of proof.

In the case which was before the Supreme Court, it will be noted that the earlier decision of the Madras High Court in Hajee Moosa case (supra) was rendered in context of the expenditure incurred by a partner over taking his spouse on a foreign tour and it was observed

that even assuming that the expenditure related to business purposes, it had a dual or twin purposes and it did not only serve purposes of business. The Supreme Court, in view of the fact that the High Court in D.B.Madan's case, had simply relied upon the decision in Hajee Moosa's case without going into the relevant aspects and considering whether there was a valid ground for calling for a question of law for its opinion, made it clear by the aforesaid observations that merely because a question of law was decided earlier by the High Court, it cannot be said that a similar question arising in a later case would cease to be a referable one. This can never be construed so as to mean that the High Court should, in all cases where a question of law has already been decided, as a matter of course call for statement of case for deciding it again whenever moved under Section 256(2).

Under Section 256(1) of the Act, an application is required to be made by the assessee before the appellate Tribunal to refer to the High Court any question of law arising out of the order of the Tribunal. Under Section 260, the High Court decides such question of law referred to it and delivers judgement thereon containing grounds on which such decision is founded, and a copy of the judgement is to be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgement. Therefore, when a question of law was referred to the High Court and a decision is rendered thereon, such decision cannot be simply ignored in a subsequent matter by requiring identical questions to be referred to the High Court again for its decision. In cases where the answer to the question of law is self evident or where the question is of an academic nature e.g where it is concluded by a judgement of the Supreme Court or of the very High Court to which the reference is sought, the High Court in exercise of its discretion under Sub-section (2) of Section 256 would be justified in refusing to require the Tribunal to refer such a question. When a decision on a question of law is rendered by the High Court, it will remain a binding precedent, on the doctrine of `staredecisis' and when an identical question of law is involved in a subsequent matter the Tribunal would be bound to follow the decision of its jurisdictional High Court and it cannot be said that a question of law arises for the opinion of the High Court from such order of the Tribunal, which has followed the High Court decision on the question which is already settled so far it is concerned, and would be a binding

precedent until reconsidered and departed from by a larger bench of the same Court or over-ruled by the Supreme Court.

In this view of the matter, it can never be said that the Supreme Court by its aforesaid observations in D.B.Madan's case (supra) required the High Courts to mechanically call for the statement of case in all matters where a question of law, which was already considered and decided upon by the High Court earlier, was involved. The fact however, remains that even if the question was decided by the High Court earlier, the High Court was not precluded from calling for a statement of case on a similar question, because, the question may be required to be reconsidered for various reasons or where the subsequent bench may not subscribe to the view already taken. We therefore, are not inclined to adopt a mechanical approach by simply calling for the statement of question in respect of a question of law, which is admittedly concluded by a decision of this Court in Lakhanpal's case (supra). We may note here that the decision of the Lakhanpal's case has not been challenged by the Revenue as stated by the learned Counsel.

We have heard the learned Counsel for the Revenue at length on the question whether the ratio of Lakhanpal's case requires to be reconsidered. In Lakhanpal's case in context of the provisions of Section 43B of the Act, it was held that the import duty and excise duty which were paid by the assessee were deductible and that the sum payable under clause (a) of Section 43B had not been claimed by way of deduction in any previous year prior to 1983. It was held that the liability to pay the duties accrued in 1983 and the duties were actually paid in that year and therefore, the amounts paid were deductible under Section 43B of the Act. Section 43B (a), inter-alia, provides that notwithstanding anything contained in any other provision of the Act, a deduction otherwise allowable under the Act in respect of any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, shall be allowed (irrespective of the previous year in which the liability to pay such income was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in Section 28 of that previous year in which such sum is actually paid by him.

There is no dispute about the fact that the deduction is claimed only in respect of the duties

actually paid by the assessee. In the context of the provision of Section 43B(a) and on carefully going through the decision in Lakhanpal's case, we are of the view that no ground is made out for reconsideration of the ratio of the decision in Lakhanpal's case. We therefore, are of the view that no question of law arises from the decision of the Tribunal for our opinion, in view of the fact that Lakhanpal's case has already concluded that question. In this view of the matter, the application is rejected. Rule is discharged with no order as to costs.

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*/Mohandas